

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

IMHOFF INVESTMENT, L.L.C.,	)	
a Michigan limited liability	)	
company, individually and as the	)	No. 10-cv-10996
representative of a class of	)	
similarly situated persons,	)	Honorable Marianne O. Battani
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
	)	
SAMMICHAELS, INC.	)	
	)	
Defendant.	)	

**PLAINTIFF’S MOTION TO ALTER OR AMEND  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59(e)**

NOW COMES plaintiff, Imhoff Investment, L.L.C., through counsel, and for its motion to amend judgment pursuant to Federal Rule of Civil Procedure 59(e), states as follows:

1. This case was a class action that resulted in a class settlement, which this Court approved through entry of a final approval order on November 2, 2016 (Doc. 120).

2. The parties’ settlement agreement included Defendant’s agreement to pay class counsel’s reasonable out-of-pocket expenses, not to exceed \$55,000, plus the cost of settlement administration, not to

exceed \$10,000.00. (Doc. 117-1 at ¶ 10). The incurred expenses exceeded these totals, but were capped by agreement during settlement negotiations.

3. Pursuant to the Court’s direction, class counsel Anderson + Wanca (“A + W”) and Bock, Hatch, Lewis & Oppenheim, LLC (“BHLO”) submitted itemized expenses for *in camera* review. The A + W expenses included the \$11,130.00 cost of class administration, and the cost of the class’s expert witness, and totaled \$38,863.05. The BHLO expenses totaled \$23,772.94.

4. On November 2, 2016, the Court entered the final approval order. (Doc. 120). The final approval order awarded \$23,772.94—the expenses of BHLO—plus the cost of the settlement administrator, but none of the other A + W expenses. (*Id.*, ¶ 12).

5. The other A + W expenses, including the costs of class notice after class certification (\$4,778.10) and of Plaintiff’s expert witness (\$18,000.00), were not included in the total the Court approved in the final approval order. Those expenses were reasonably incurred to benefit the class, and Defendant had agreed to pay them in the settlement, but Counsel’s submission to the Court did not effectively

present the A + W and BHLO expense itemizations, which are separate and non-duplicative. In short, A+W's expenses weren't included in the Court's award, even though those expenses were reasonable and beneficial, and Defendant agreed to pay them.

6. Therefore, Plaintiff requests that the Court modify the expense award.

7. Counsel apologizes for not bringing this matter to the Court's attention sooner but the issue wasn't realized until Counsel sat down with the final approval order and expense logs.

8. This motion is timely and the Court has jurisdiction to hear it because the final judgment of dismissal was not entered until December 1, 2016. (Doc. 122). Under Rule 59(e), the Court retains jurisdiction to alter or amend its judgments for 28 days.

9. Plaintiff informed Defendant on December 14, 2016 that it intended to bring this motion and that it expected it to be unopposed given the settlement agreement. Defendant did not respond.

WHEREFORE, Plaintiff respectfully moves to modify or amend the judgment (Doc. 122) to award the full agreed \$55,000.00 in expenses to class counsel plus \$10,000.00 for settlement administration (a total of

\$65,000.00) as part of the class settlement, rather than just \$23,772.94  
for expenses plus administration.

Respectfully submitted,  
IMHOFF INVESTMENT, LLC.,  
a Michigan corporation,  
individually and as the  
representative of a class of  
similarly- situated persons,

/s/ Phillip A. Bock  
One of Plaintiff's Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that, on December 22, 2016, he caused the foregoing to be filed using the Court's CM/ECF system, which automatically serves a copy on all counsel of record.

/s/ Phillip A. Bock